

Drew University and Local Union 1310, Maintenance & Custodial Division, International Brotherhood of Painters and Allied Trades, AFL-CIO, Petitioner.
Case 22-RC-6539

April 30, 1976

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on November 14, 1975,¹ and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief in support thereof, and hereby adopts the Acting Regional Director's findings² and recommendations.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local Union 1310, Maintenance & Custodial Division, International Brotherhood of Painters and Allied Trades, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time maintenance and custodial employees, including mechanics, mechanic helpers, custodians, truckdrivers, groundskeepers, maids, and store keepers, employed by the Employer at its 36 Madison Avenue, Madison, New Jersey campus; excluding all office clerical employees, professional employees, part-time and seasonal student employees, guards and supervisors as defined in the Act and all other employees.

MEMBER JENKINS, concurring:

Although I agree with the result reached by my colleagues, I cannot accept the rationale on which they rely. In concluding that the Employer's objection to the election should be overruled, my colleagues find it unnecessary to determine whether or not group leader Irene Smiley was viewed by the employees as a spokesperson for management, because they consider the statements attributed to Smiley to be in no way related to the election or its outcome. Smiley is alleged to have mentioned to four employees, who were on their way to the polls, that Ralph Smith, the University's director of physical plant, had told her (Smiley) that there were too many employees working in their area, that changes would have to be made, and that they would have to work harder.

Unlike my colleagues, I am unable to conclude that remarks of this nature are divorced from the election or its outcome simply because no direct reference to either was made during the course of the remarks. The employees might well question what prompted such a comment at a time when they were on their way to vote, and it would hardly be unreasonable for such employees to interpret the statement as a not-so-veiled threat to reduce jobs and impose more onerous working conditions if the Union were successful in the election, as in fact it was. Thus, in ordinary circumstances, I would find it necessary to determine whether or not Smiley was a spokesperson for management and was considered to be such by the employees before I could resolve the objection. Here, however, even if it be assumed that Smiley's remarks can properly be attributed to the Employer, they cannot be said to have affected the results of the election because the threat, if in fact one was made, was directed against the Union, but the Union nevertheless received a majority of the valid votes cast in the election. In such circumstances, we do not permit the party guilty of misconduct to use that misconduct as a basis for having an election overturned in its favor.³

For the foregoing reasons, I concur in the result reached by my colleagues.

² We agree with the Acting Regional Director that the alleged objectionable conduct did not constitute election interference because the statements were in no way related to the upcoming election or its outcome. We therefore find it unnecessary to pass on his other grounds for overruling the objections.

³ Cf. *Decatur Transfer & Storage, Inc.*, 178 NLRB 63 (1969); *Packerland Company, Inc.*, 185 NLRB 653 (1970).

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 21 for, and 19 against, the Petitioner; there were no challenged ballots.